

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6864 of 1997

with

SPECIAL CIVIL APPLICATION NO 1205 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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RAMABHAI BHAGWANDAS PRAJAPATI

Versus

NAROL GROUP SEVA SAHKARI MANDLI LIMITED

Appearance:

MR MANOJ N POPAT for Petitioner

MR DJ BHATT for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 16/07/98

ORAL JUDGEMENT

#. Rule. In SCA No.1205 of 1998 Mr.M N Popat, learned advocates waives service of rule. In SCA No.6864 of 1997, Mr.D.J.Bhatt, Learned Advocate waives service of rule.

#. These two petitions are filed respectively by the employer and the employee to challenge the award passed by the labour court, Ahmedabad in Reference No.37/88 on 5th March,1997. As these two petitions are against one and the same award, they are heard together and they are being disposed of by this common judgment.

#. Ramabhai Bhagwandas Prajapati, the petitioner in Special Civil Application No.6864/97 was working as Secretary of Narol Group Seva Sahkari Mandli Ltd. The general body of the said cooperative society passed a resolution dated 22th September,1987 mentioning therein that there is tampering with the record and accounts by the Secretary and he has also misappropriated amount of Rs.3000/- and therefore he should be removed from service and accordingly his services were terminated. Therefore the said Secretary - employee raised an industrial dispute as there could not be any conciliation between the parties, the reference No.37/88 came to be referred to the labour court of Ahmedabad.

#. It was contention of the employer i.e. Narol Group Seva Sahakari Mandli Ltd., before the labour court that there was in fact alteration of accounts and fabrication of accounts as well as misappropriation by the workman Secretary and therefore they were justified in removing him from services. It was also contended before the labour court that the workman has also initiated a proceeding under the Co-operative Societies Act by filing Lavad Suit before the Co-operative Court to challenge his said removal and therefore the present proceeding should be dismissed.

#. The learned labour court proceeded to record evidence and he gave opportunity to both the sides, on behalf of the workman he himself has entered into witness box whereas on behalf of the Co-operative Society nearly 6 witness were examined. In my opinion, the learned labour court had committed an error into going into question as to whether in fact there was alteration in accounts or misappropriation by the workmen or not. The workman has come before this court with the claim that he has been illegally retrenched by not following procedure as laid down under Section 25 F. It was also not the case of the employer that in fact they had held departmental inquiry against him and after having recorded a finding of the proof of his misconduct, he has been removed from the service. Employer had not also sought approval for its action under Section 33(2)(b) of Industrial Disputes Act. Only if either of such stand is taken by the employer then only in that case if the

labour court finds that the said departmental inquiry proceeding is illegal and invalid, he can permit the employer to lead evidence to prove the misconduct. But when admittedly no departmental proceeding is held, there is no question of permitting the employer to lead evidence to prove the misconduct. Once it is admitted or proved that there was no holding of departmental inquiry, and compliance with the provisions of Section 25 F of Industrial Disputes Act, the natural consequences will follow on account of the non fulfillment of the procedure laid down under Section 25 F of the Industrial Disputes Act. Therefore in my opinion, it was waste of public time and public money in allowing the employer to lead evidence to prove alleged misconduct and misappropriation. Therefore, I am not at all discussing the evidence led before the labour court on that issue. When it is admitted position that the workman has been removed without holding any departmental inquiry. When it is not case of the employer that they have moved the authority to give an approval for the said removal, there is no question of considering the evidence regarding the proving of misconduct in the proceeding i.e. reference before the labour court. In view of the said view taken by me, I am not considering and discussing the evidence recorded in the reference by the labour court.

#. The learned advocate for the employer Mr.Bhatt vehemently urged before me that admittedly on the date when this industrial dispute was raised and the hearing of reference was pending, the proceeding under the Co-operative Societies Act by way of Lavad suit was pending before the Lavad Court. Therefore, in these circumstances, the reference ought not to have been entertained. But at the same time, he has fairly admitted that the said Lavad suit was withdrawn before the disposal and decision of this reference by the labour court. It is also admitted fact that the Lavad Court has no jurisdiction to entertain the claim of the present employee workman therefore when the Co-operative Court had no jurisdiction to entertain the proceeding, merely because the workman happened to take up a proceeding before the Co-operative Tribunal, he could not be non suited. Because after all it would be proceeding before the court having no jurisdiction. Consequently, it could not have any effect on the present proceeding. He also urged before me that there was no reference of pendency of the said proceeding before the Lavad Court by the workman in the present proceeding and on that ground he should be also non suited. It is true that there was no reference of the pendency of the said proceeding by the workman in the present proceeding but as the position

stands, when this proceeding came for final proceeding, the proceeding before the Co-operative Societies Court was not in existence, therefore, in these circumstances, there is no question of non suiting him. That conduct of him could be taken into consideration and that conduct must have been taken consideration by the labour court when the labour court directed to reinstate him with only 25 % backwages.

#. Thus, the award passed by the labour court ordering the reinstatement of the workman is quite legal and valid. It could not be said that the said finding recorded by the labour court is perverse. The learned advocate for the workman vehemently urged before me that the labour court ought to have awarded full back wages to the workman while directing the reinstatement. But as the conduct of the workman which has come on record and which has been taken into consideration by the labour court and particularly the conduct of the workman in skillfully avoided to mention of having approached the Lavad Court and having attempted for taking interim relief, the labour court's action in not allowing backwages to the full extent is quite justified. After all it is the discretionary power of the labour court to grant backwages and in the circumstances, I hold that no interference is called for in the discretion used by the labour court in view of the conduct of the workman. I, therefore hold that both the special civil applications deserve to be rejected. However, I direct the employer to implement the award passed by the labour court. I am also making quite clear that the employer will be entitled to initiate the departmental proceeding against the workman if the employer wants to take action for the alleged misconduct of tampering with record and accounts and alleged misappropriation after only holding the departmental proceeding, it would be open for the employer to take necessary action. Arbitrary action of dismissing the workman without holding departmental proceeding is illegal and has been rightly quashed and set aside by the labour court. Thus, I dismiss both petitions with no order as to cost. Rules discharged in both petitions.

Date : 16-7-1998 (S.D.Pandit,J.)

(KPP)